

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

AARON BUCKLEY,)	
)	
Petitioner,)	Civil Action No. 0:08-970-CMC-BM
)	
v.)	
)	
COLUMBIA CARE CENTER,)	REPORT AND RECOMMENDATION
JUST CARE, INC., IMMIGRATION))	
AND CUSTOMS ENFORCEMENT,))	
ICE, ELDON WYATT, CEO)	
Director,)	
)	
Respondents.)	
_____)	

This is a pro se Petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2241 on March 20, 2008. The Respondents filed motions to dismiss on April 29, 2008 and May 28, 2008, respectively, asserting that the Petition is without merit and should be dismissed. As the Petitioner is proceeding pro se, Roseboro orders were entered by the Court on April 30, 2008 and May 29, 2008, advising Petitioner of the importance of a motion for summary judgment and of the need for him to file an adequate response. Petitioner was specifically advised that if he failed to respond adequately, the Respondents' motions may be granted, thereby ending his case.

However, notwithstanding the specific warning and instructions as set forth in the Court's Roseboro order, the Petitioner failed to respond to the motion. As the Petitioner is proceeding pro se, the court filed a second order on July 28, 2008, advising Petitioner that it appeared to the Court that he was not opposing the motion and wished to abandon this action, and giving the



Petitioner an additional ten (10) days in which to file his response to the Respondents' motions for summary judgment. The Petitioner was specifically warned that if he failed to respond, this action would be recommended for dismissal with prejudice for failure to prosecute. Davis v. Williams, 588 F.2d 69, 70 (4th Cir. 1978), Rule 41(b) Fed.R.Civ.P.

The Court's order was returned to the Clerk with no explanation; see Court Docket No. 30; and on inquiry by this office, it has been learned that Petitioner is no longer incarcerated at the Columbia Care Center.¹ Petitioner has also still not responded to either the motions for summary judgment or to the Court's Roseboro orders. Accordingly, it is recommended that this action be dismissed with prejudice for lack of prosecution. See Davis, 558 F.2d at 70; Rule 41(b), Fed.R.Civ.P.; Ballard v. Carlson, 882 F.2d 93, 95 (4th Cir. 1989), cert. denied sub nom, Ballard v. Volunteers of America, 493 U.S. 1084 (1990) [Magistrate Judge's prior explicit warning that a recommendation of dismissal would result from plaintiff failing to obey his order was proper grounds for the district court to dismiss suit when plaintiff did not comply despite warning].

The parties are referred to the Notice Page attached hereto.



Bristow Marchant
United States Magistrate Judge

Columbia, South Carolina

August 12, 2008

¹In an order filed April 8, 2008, Petitioner was instructed to keep the Court informed of his whereabouts, and was warned that a failure to do so could result in dismissal of his case. See Order filed April 8, 2008.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).